



STATE OF ARIZONA

JANICE K. BREWER  
GOVERNOR

EXECUTIVE OFFICE

April 29, 2011

The Honorable Ken Bennett  
Secretary of State  
1700 West Washington, 7<sup>th</sup> Floor  
Phoenix, Arizona 85007

RE: SB 1497 (joint powers exercise; separate entities)

Dear Secretary Bennett:

Today I vetoed SB 1497 which would allow the Board of Regents to create a separate legal entity.

Expanding the reach of higher education to rural areas is critical to the long-term economic and social development of Arizona. I fully support creative and innovative efforts that advance our state goals in this area. However, it is unclear how SB 1497 moves Arizona down that path. My review of this bill suggests that the language is not necessary for the associated project. Because of the potential unintended consequences of providing broad authority for no clear purpose, I have vetoed the bill. I do not believe this will delay the advancement of the Payson project and if additional legislation is needed, I am willing to work with the community to develop and thoroughly vet any such legislation.

Sincerely,

A handwritten signature in cursive script that reads "Janice K. Brewer". The signature is written in dark ink and is positioned below the word "Sincerely,".

Janice K. Brewer  
Governor

cc: The Honorable Russell Pearce  
The Honorable Andy Tobin  
The Honorable Sylvia Allen  
Senate Secretary  
Chief Clerk of the House of Representatives  
Arizona News Service

House Engrossed Senate Bill

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

## **SENATE BILL 1497**

AN ACT

AMENDING SECTION 11-952.02, ARIZONA REVISED STATUTES; RELATING TO JOINT  
EXERCISE OF POWERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 11-952.02, Arizona Revised Statutes, is amended to  
3 read:

4 11-952.02. Separate legal entities; joint exercise of powers

5 A. If public agencies identified in subsection B- C of this section  
6 form a separate legal entity pursuant to section 11-952, the entity has the  
7 common powers specified in the agreement ESTABLISHING THE ENTITY and may  
8 exercise them in a manner or according to the method provided in the  
9 agreement. Notwithstanding title 38, an officer or elected member of the  
10 governing body of a party to the agreement may also act in the capacity of a  
11 member of the governing body of the separate legal entity. In its own name  
12 and subject to the provisions of the agreement, the separate legal entity,  
13 subject to existing applicable law, may:

14 1. Make and enter into contracts, including contracts, leases or other  
15 transactions with one or more of the parties to the agreement forming the  
16 separate legal entity.

17 2. Employ agents and employees.

18 3. Acquire, hold or dispose of property.

19 4. Acquire, construct, manage, maintain and operate buildings, works,  
20 infrastructure and improvements.

21 5. Incur debts, liabilities and obligations.

22 6. Sue and be sued.

23 7. EXERCISE THE COMMON GOVERNMENTAL AND PROPRIETARY POWERS OF THE  
24 CONTRACTING PARTIES SPECIFIED IN THE AGREEMENT.

25 B. IN ITS OWN NAME AND SUBJECT TO THE PROVISIONS OF THE AGREEMENT, THE  
26 SEPARATE LEGAL ENTITY, SUBJECT TO EXISTING APPLICABLE LAW, HAS THE RIGHTS AND  
27 IMMUNITIES OF THE PARTIES THAT ARE GRANTED BY THE CONSTITUTION OF ARIZONA AND  
28 STATUTES OF THIS STATE, INCLUDING IMMUNITY OF THE ENTITY'S PROPERTY FROM  
29 TAXATION.

30 B- C. Cities, towns, counties, THE ARIZONA BOARD OF REGENTS and  
31 special taxing districts established pursuant to title 48, chapters 11, 12,  
32 17, 18, 19 and 22 may form a separate legal entity pursuant to section  
33 11-952, for the purposes of this subsection. The intergovernmental  
34 agreement must state the intent to form a separate legal entity pursuant to  
35 this subsection. The governing body of a separate legal entity formed  
36 pursuant to this subsection shall be composed of ~~officials elected to one or~~  
37 ~~more~~ MEMBERS of the governing bodies of the ~~political subdivisions~~ PUBLIC  
38 AGENCIES that are parties to the agreement, or their designees. A separate  
39 legal entity identified pursuant to this subsection:

40 1. Is a political subdivision of this state having:

41 (a) The governmental and proprietary powers that are common to the  
42 contracting parties specified in the agreement, including, if applicable, the  
43 power to make voluntary contributions in lieu of taxes and those powers  
44 provided for in section 11-952 and this section.

1 (b) The rights and immunities of the parties that are granted by the  
2 constitution and statutes of this state, including immunity of its property  
3 from taxation.

4 2. May separately contract for an undertaking with any two or more of  
5 the parties or other public agencies or other entities. Limitations on the  
6 exercise of common powers shall be applicable only to the parties to the  
7 agreement participating in the undertaking.

8 3. In addition to other powers provided for in the agreement and  
9 whether or not one or more parties to the agreement do not have bonding  
10 authority for the undertaking, by a vote of its governing body, may issue  
11 revenue bonds, or incur obligations payable from the entity's revenues, to  
12 pay the costs and expenses of acquiring or constructing any structures,  
13 facilities or equipment necessary to effectuate the purposes of the agreement  
14 subject to the following conditions and requirements:

15 (a) The revenue bonds are payable solely from the revenues of the  
16 undertaking for which they were issued and are not payable from any revenues,  
17 taxes or assessments paid to, or to be levied or collected by, the entity or  
18 the ~~political subdivisions~~ PUBLIC AGENCIES that are parties to the agreement  
19 that forms the entity.

20 (b) The bonds and the income on the bonds are at all times free from  
21 taxation by this state or any political subdivision of this state.

22 (c) The entity may pledge to the payment of its bonds all revenues it  
23 has or will receive from the sales of goods or services of the undertaking.  
24 Any pledge made to secure the bonds is valid and binding from the time the  
25 pledge is made. The monies pledged and received by the entity to be placed  
26 in the fund established for the purpose of securing and paying the bonds are  
27 immediately subject to the lien on or the pledge of the monies without any  
28 future physical delivery, ANY recording of any instrument or any further act.  
29 Any lien or pledge is valid and binding against all parties who have claims  
30 of any kind in tort, contract or otherwise against the entity or the  
31 ~~political subdivisions~~ PUBLIC AGENCIES that formed the entity regardless of  
32 whether the claimants have notice of the pledge. The official resolution or  
33 trust indenture or any instrument by which the pledge is created when placed  
34 in the entity's official records is notice to all concerned of the creation  
35 of the pledge, and those documents need not be recorded in any other place to  
36 perfect the pledge.

37 (d) Subject to any registration requirements, bonds issued by the  
38 entity under this paragraph are fully negotiable within the meaning and for  
39 all purposes of the uniform commercial code regardless of whether the bonds  
40 actually constitute negotiable instruments under the uniform commercial code.

41 (e) The bonds do not constitute an indebtedness of the entity, the  
42 ~~political subdivisions~~ PUBLIC AGENCIES that formed the entity or this state  
43 within the meaning of any statutory or constitutional limitation on  
44 indebtedness.

1 (f) The bonds may be sold at public or private sale at, above or below  
2 par as determined by the governing body of the entity.

3 (g) The treasurer of any ~~political-subdivision~~ PUBLIC AGENCY forming  
4 the entity may act as the entity's fiscal agent or the entity may appoint any  
5 commercial bank doing business in this state to hold, deposit and invest the  
6 entity's monies according to any resolution or other document authorizing the  
7 issuance of the bonds.

8 (h) Title 35, chapter 3, articles 5 and 7 apply to bonds issued  
9 pursuant to this paragraph.

10 (i) Bonds issued pursuant to this paragraph shall be issued only after  
11 consultation with the state certification board established by section  
12 48-101.

13 4. May engage in electric generation and transmission activities but  
14 may not engage in electric distribution activities.

15 5. Shall not be deemed a public power entity pursuant to title 30 by  
16 virtue of any undertaking or other contract.

17 ~~G.~~ D. For the purposes of subsection B- C of this section,  
18 "undertaking":

19 1. Means one or more of the following:

20 (a) Purchasing, constructing, leasing or acquiring any real or  
21 personal property, works or facilities that the ~~political-subdivisions~~ PUBLIC  
22 AGENCIES that formed the entity are authorized by law to purchase, construct,  
23 lease or otherwise acquire.

24 (b) Improving, reconstructing, extending or adding to any real or  
25 personal property, works or facilities owned or operated by the entity.

26 (c) Any program of development involving real or personal property,  
27 works or facilities that the entity is authorized by law to purchase,  
28 construct, lease or otherwise acquire or the improvement, reconstruction,  
29 extension or addition to the program.

30 (d) Providing utility services, purchasing, constructing, leasing or  
31 acquiring, or the extension or addition of, works or facilities designed to  
32 serve areas or territories already being served by any of the parties to the  
33 agreement.

34 2. Does not include the acquisition by eminent domain of existing  
35 works or facilities of a political subdivision or public service corporation.

36 ~~D.~~ E. An entity formed pursuant to this section is subject to:

37 1. Title 40, chapter 2, article 6.2.

38 2. Title 48, chapter 1, article 8 with regard to any property owned by  
39 the entity.

40 F. THE REAL PROPERTY OF A SEPARATE LEGAL ENTITY FORMED PURSUANT TO  
41 THIS SECTION IS NOT SUBJECT TO THE ZONING RESTRICTIONS OF ANY OF THE PUBLIC  
42 AGENCIES FORMING THE ENTITY IF THE ENTITY'S GOVERNING BOARD APPROVES A MASTER  
43 PLAN FOR THE REAL PROPERTY.

Passed the House April 19, 2011,

by the following vote: 48 Ayes,

11 Nays, 1 Not Voting

[Signature]  
Speaker of the House

Cheryl Laube  
Chief Clerk of the House

Passed the Senate March 21, 2011,

by the following vote: 16 Ayes,

10 Nays, 7 Not Voting

[Signature]  
President of the Senate

Charmine Billington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

           day of           , 20          ,

at            o'clock            M.

            
Secretary to the Governor

Approved this            day of

          , 20          ,

at            o'clock            M.

            
Governor of Arizona

S.B. 1497

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this            day of           , 20          ,

at            o'clock            M.

            
Secretary of State

SENATE CONCURS IN HOUSE  
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 19, 20 11

by the following vote: 22 Ayes,

0 Nays, 0 Not Voting

[Signature]  
President of the Senate

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

20 day of April, 20 11

at 12:00 o'clock P. M.

[Signature]  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

**VETO**  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

S.B. 1497

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State